action entered into for profit, though not connected with the trade or business * * *," may be deducted, tends to show that the interpretation put upon the previous law was not according to the intent of Congress.

INTERNATIONAL LAW—ALIEN'S CAPACITY TO INHERIT LAND—EFFECT OF WAR ON TREATIES.—Intestate owned land in New York. One of his two surviving daughters, plaintiff in this case, had married an Austro-Hungarian subject resident in the United States. Shortly before intestate's death war was declared between Austria-Hungary and the United States. The New York Real Property Law, Sec. 10, enabled "alien friends" to acquire land in New York by descent. 7 CONSOL. LAWS, (2nd Ed.), 7269. The Treaty of Commerce and Navigation between Austria-Hungary and the United States, Art. 2, provided that where citizens of either country should be incapable under the laws of the other of acquiring land by descent they should be allowed at least two years to sell lands which they would otherwise inherit and to withdraw the proceeds. 9 STAT. 944; 2 MALLOY, TREATIES, 34. Could plaintiff inherit New York land? If not, had she a right to dispose of it as provided in the Treaty? *Held,* that plaintiff could not inherit land under the New York law, but that she had a right to dispose of land which she would otherwise inherit as provided in the Treaty. The Treaty with Austria-Hungary, at least as regards the article in controversy, was compatible with a state of hostilities and had not been suspended by war. *Techt* v. *Hughes,* (New York, 1920), 128 N. E. 185.

At common law an alien, friend or enemy, could not take land by descent. See 1 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, [2nd Ed.], 459; 2 BLACKSTONE, COMMENTARIES, 249; *Dawson's Lessee* v. *Godfrey,* 4 Cr. 321. By virtue of the Citizenship Act of 1907, Sec. 3, which provides that "any American woman who marries a foreigner shall take the nationality of her husband," plaintiff had become an alien. 34 STAT. 1228; *Mackenzie* v. *Hare,* 239 U. S. 299. Upon the outbreak of war with Austria-Hungary she had become an alien enemy. Reliance upon Sec. 10 of the Real Property Law proved unavailing, since an alien enemy could not be regarded as an "alien friend" upon any reasonable construction. The Court's opinion upon this point is well considered and sound. It would have been no occasion for surprise if plaintiff's reliance upon the Treaty had proved equally precarious. There has been much diversity of opinion as regards the effect of war on treaties. It has been said that war abrogates treaties, with a few exceptions, and that their renewal, if desired, must be expressly stipulated. 3 PHILLIMORE, INT. LAW, [3rd Ed.], 794; 2 WESTLAKE, INT. LAW, [2nd Ed.], 32. On the other hand, a majority of the modern publicists emphasize the exceptions. 2 COBBETT, CASES, [3rd Ed.], 40; HALL INT LAW, [7th Ed.], Sec. 125; 2 OPPENHEIM, INT. LAW, [2nd Ed.], Sec. 99. It is difficult to extract a general rule from the practice of nations. Publicists usually resolve the difficulty by resort to classification. It is found upon classification that certain treaties become operative only in case of war, that others may continue operative in case of war by express stipulation (see *Fritz Schulz, Jr., Co.* v. *Raimes & Co.,* 164 N. Y. Supp. 454), that others may be suspended during war, and that

others may be abrogated. Treaties of commerce and navigation are usually included either among those which are suspended or among those which are abrogated. The New York court adopts a sensible pragmatic test, commended by several of the modern writers on international law, and holds that treaty provisions compatible with a state of hostilities, unless expressly terminated, should be enforced by the courts and those incompatible rejected. The mere fact that other provisions of the same treaty must be suspended or even abrogated is not conclusive. In the words of Mr. Justice Cardozo, "International law today does not preserve treaties or annul them, regardless of the effects produced. It deals with such problems pragmatically, preserving or annulling as the necessities of war exact. It establishes standards, but it does not fetter itself with rules." In *Techt* v. *Hughes* the New York Court of Appeals has contributed an admirable decision and an illuminating precedent.

LANDLORD AND TENANT—TENDER OF RENT BY HOLDING-OVER TENANT—ACCEPTANCE BY LANDLORD OTHERWISE THAN AS RENT.—Lessor gave notice properly for tenant to quit premises. Tenant held on and sent rent to lessor who retained it but insisted that he was receiving the money not as rent but for use and occupation. In an action to recover possession of the premises, *held,* even though the lessor denied recognition of the tenancy as existing, the acceptance of the money operated as a waiver of the notice to quit. *Hartell* v. *Blackler,* [1920] 2 K. B. 161.

So also in the case of *Croft* v. *Lumley,* 5 E. & B. 648, where the lease was forfeited by breach of covenants, the lessor was held to waive the forfeiture by retaining money paid as rent, though he insisted he accepted it not as rent but for use and occupation. In that case the judges applied the maxim: "Money paid is to be applied according to the express will of the payer, not of the receiver." "Such acceptance operates as a matter of law to waive all forfeitures then known to the lessor, notwithstanding any protest on his part against such waiver," WOODFALL, LANDLORD AND TENANT. Generally any recognition by a lessor of a tenancy as existing, after a right of entry has accrued and lessor has notice of the forfeiture, will have the effect of a waiver. *Dermott* v. *Wallach,* 1 Wall. 61. So the acceptance of rent by a lessor is waiver of forfeiture or notice to quit. The landlord affirms that the lease is still in effect by accepting rent. *McGlynn* v. *Moore,* 25 Cal. 384; *Totalis* v. *Cannellos,* 138 Minn. 179. And this even though the lessor expressly remonstrates against it being a waiver of a prior cause of forfeiture. *G. C. & S. F. Ry. Co.* v. *Settegast,* 79 Tex. 256. But payment must be made as rent. It is not waiver if made as compensation for use and occupation. *Kenny* v. *Sen Si Lun,* 101 Minn. 253; *Croft* v. *Lumley,* 5 E. & B. 648. To render acceptance of rent waiver of forfeiture, at time of acceptance the lessor must have knowledge of the cause of forfeiture. *German-American Bank* v. *Gollmer,* 155 Cal. 683.

LANDLORD AND TENANT—WASTE.—The lessee of a building with office space on the second floor planned to alter the second story for a sublessee by